

higher rates, and will cause otherwise avoidable environmental damage.<sup>30</sup> More specifically, the plan to extend natural gas mains, based in part on speculative projections of future subscriptions, entails the significant risk that such expansion would require subsidization by non-expansion customers in the event projections are not realized. With no gas BCA framework in place, the Company has no way to evaluate whether the expansions would be cost-effective from a societal perspective over the long run.<sup>31</sup>

The Company ultimately withdrew this flawed proposal. Accordingly, the Joint Proposal appropriately includes no mention of the Neighborhood Expansion Program, and no part of the gas revenue requirement included in the Joint Proposal relates to cost recovery for the type of activities proposed under the Neighborhood Expansion Program. Pace strongly supports this outcome because it is in the public interest.

### **C. Pace’s Reservation Concerning Cost Recovery for Trade Association Dues**

On its signature page, Pace noted that it signs onto the Joint Proposal “except for, under Section B, the Company’s cost recovery of membership dues paid to trade associations, because of insufficient evidence that these dues are directly beneficial to, and not contrary to the interests of, ratepayers and do not impermissibly include expenses related to legislative lobbying. *See* N.Y. Pub. Serv. Law § 114-a.”<sup>32</sup> Pace does not support the Company’s cost recovery for the membership dues it pays to trade associations, including Edison Electric Institute (“EEI”) and the American Gas Association (“AGA”), because of the lack of evidence in the record that these dues do not include the cost of legislative lobbying—that is, that charging customers for these dues would not be in violation of state law.

---

<sup>30</sup> Rábago Direct Testimony at 37.

<sup>31</sup> *Id.* at 44.

<sup>32</sup> Joint Proposal at pdf p. 81.

New York Public Service Law section 114-a mandates that “[i]n determining rates to be charged customers, the commission shall not include the cost of legislative lobbying on behalf of any public utility as part of any such utility's operational costs.” The Company has the burden of producing substantial evidence sufficient to allow the Commission to determine that the costs the Company seeks to recover, including for EEI and AGA dues, support just and reasonable rates and do not include expenses related to legislative lobbying.<sup>33</sup> Bare assertions of trade associations are insufficient evidence upon which to base a claim of recovery for costs.<sup>34</sup>

Pace witness Rábago recommended disallowance of rate recovery of the more than \$233,000 per year for dues paid to EEI and AGA, based on the lack of evidence to support the reasonableness of recovery of this expense, and the fact that it cannot be determined whether the Company is requesting that customers pay for lobbying and other advocacy by EEI and AGA that is counter to the interest of the customers.<sup>35</sup> As Mr. Rábago explained in his testimony, while the majority of New Yorkers support renewable energy, the reduction of greenhouse gas emissions, and the state's REV initiatives, EEI's and AGA's advocacy and policy positions have been demonstrably opposed to the type of clean energy goals that New York hopes to achieve.<sup>36</sup> Supplemental discovery responses provided by the Company establish that it has provided no

---

<sup>33</sup> N.Y. Pub. Serv. Law § 66(12)(i); *see also Nat'l Fuel Gas Distribution Corp. v. Pub. Serv. Comm'n*, 16 N.Y.3d 360, 369 (2011); *St. Lawrence Gas Co. v. Pub. Serv. Comm'n*, 42 N.Y.2d 461, 464 (1977).

<sup>34</sup> Even where a utility has submitted an invoice from a trade association, the Commission has found that to be insufficient evidence upon which to base cost recovery. *See* Opinion and Order Determining Revenue Requirement and Rate Design, *Orange and Rockland Utilities, Inc.*, Case Nos. 29046 and 29047, 1986 WL 289251, at \*15 (PSC Feb. 11, 1986) (finding that “the information relied on by O&R had been furnished by EEI and had not been independently analyzed by the company”). In these cases, the Commission found that the Company had not met its burden of proof that the portion of EEI dues it sought to recover from ratepayers did not include lobbying expenses and allowed recovery of only 50 percent of the Company's EEI dues.

<sup>35</sup> Rábago Direct Testimony at 63.

<sup>36</sup> *Id.* at 55–56.

evidence upon which to conclude that rate recovery of any amounts paid to EEI and AGA is just and reasonable.<sup>37</sup> In the supplemental discovery responses, the Company cannot identify any specific amounts of EEI or AGA dues, assessments, or contributions previously funded by ratepayers.<sup>38</sup> The Company also admits that it “does not track or participate in each and every EEI [or AGA] activity,” and therefore cannot identify the allocation of dues payments to general EEI and AGA activities, or to EEI and AGA lobbying, or for any other purpose.<sup>39</sup> Moreover, the Company’s electric and gas rate plans do not “explicitly fund activities such as the payment of dues to EEI [or AGA].”<sup>40</sup> These responses conclusively establish that the Company has no evidence to demonstrate that the amounts paid to EEI and AGA in dues that it seeks to recover from ratepayers are a reasonable cost related to the provision of electric or gas service, rather than expenses of legislative lobbying that may not be recovered under New York law. Because the record lacks such evidence, Pace is unable to support the Company’s recovery of this full amount from ratepayers.

## **CONCLUSION**

Although Pace specifically does not support the Joint Proposal’s allowance of cost recovery for the Company’s trade association dues, Pace submits that the Joint Proposal overall is in the public interest and within the range of litigated outcomes and recommends that the Commission adopt and approve the Joint Proposal.

---

<sup>37</sup> See Stipulation and Agreement to Entry of Specified Interrogatory Responses as an Exhibit in Evidentiary Hearing Record (filed Nov. 20, 2018) (attaching Company supplemental responses to Pace 5-10 through 5-15, 5-18 through 5-21, and Company responses to Pace 6-1 through 6-3) (annexed hereto as Exhibit 1).

<sup>38</sup> *Id.*, Ex. 1 (Company responses to Pace 5-10 Supplement, Pace 5-11 Supplement).

<sup>39</sup> *Id.*, Ex. 1 (Company responses to Pace 5-14 Supplement, Pace 5-15 Supplement).

<sup>40</sup> *Id.*, Ex. 1 (Company responses to Pace 5-12 Supplement, Pace 5-13 Supplement).